

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

ANDRE R. BRUNT,

Plaintiff,

v.

Case No. 20-C-726

JESSE BUSSHARDT, et al.,

Defendants.

---

**SCREENING ORDER**

---

Plaintiff, who is in custody at Milwaukee County Jail awaiting trial in state court, filed a pro se complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. In a previous order, the court dismissed Plaintiff's complaint because it appeared to advance unrelated claims against multiple defendants, including a state prosecutor, who the court stated was likely immune. On August 10, 2020, Plaintiff filed an amended complaint. The court will screen Plaintiff's amended complaint pursuant to 28 U.S.C. § 1915A.

**SCREENING OF THE AMENDED COMPLAINT**

The court has a duty to review any complaint in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity, and dismiss any complaint or portion thereof if the prisoner has raised any claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). In screening a complaint, I must determine whether the complaint complies with the Federal Rules of Civil Procedure and states at least plausible claims for which relief may be granted. To state a cognizable claim under the federal notice pleading system, Plaintiff is required to provide a "short and plain statement of

the claim showing that [he] is entitled to relief.” Fed. R. Civ. P. 8(a)(2). It must be at least sufficient to provide notice to each defendant of what he or she is accused of doing, as well as when and where the alleged actions or inactions occurred, and the nature and extent of any damage or injury the actions or inactions caused.

A complaint must contain sufficient factual matter “that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “The pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (quoting *Twombly*, 550 U.S. at 555). “The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 556. “[T]he complaint’s allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 555 (internal quotations omitted).

#### **ALLEGATIONS OF THE AMENDED COMPLAINT**

On August 28, 2016, Plaintiff alleges he was being followed by police as he was trailing family members to their residence. Plaintiff says he parked his car, exited his vehicle, and walked to the residence’s back door where its occupants were standing. Plaintiff claims Officer Boyack ordered him to stop; moments later he was apprehended by Officer Busshardt. Officer Busshardt said he heard metal hitting metal and had seen Plaintiff throwing a pipe, according to the complaint. Plaintiff alleges a BBC film crew was also present. Plaintiff also states that additional officers

aided and abetted the unlawful intrusion, and, in a different location Officer Dillmann located a firearm. Plaintiff states he was arrested and charged with possession of a firearm.

Plaintiff explains that his current case in state court, 2017CF00866, is a reissuance of a prior case, 2016CF003885. He indicates the first case was dismissed without prejudice due to an error. Plaintiff asks the court to dismiss the charge against him with prejudice and award him \$1.2 million from each officer for false imprisonment and pain and suffering.

### **THE COURT'S ANALYSIS**

“To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that he or she was deprived of a right secured by the Constitution or the laws of the United States, and that this deprivation occurred at the hands of a person or persons acting under the color of state law.” *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)). Plaintiff alleges that the defendant police officers violated his constitutional rights by unlawfully arresting and charging him with possession of a firearm by a felon.

Plaintiff's request that this court dismiss the charges against him is foreclosed by the abstention doctrine. Under the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), federal courts are required to abstain from interfering in ongoing state criminal proceedings. That holding rested partly on traditional principles of equity, but was based primarily on the “even more vital consideration” of comity. *Id.* at 44. Comity refers to “a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.” *Id.*; see also *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013) (“When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution.”); *Jones v.*

*Perkins*, 245 U.S. 390, 391 (1918) (“It is well settled that in the absence of exceptional circumstances in criminal cases the regular judicial procedure should be followed and habeas corpus should not be granted in advance of a trial.”). Thus, under *Younger*, Plaintiff’s request for the court to intervene and dismiss his state court case—before those proceedings have concluded—must be denied.

Even aside from *Younger*, Plaintiff’s request that the charges against him be dismissed is not available under § 1983. Federal relief from state custody is only available in the form of habeas corpus generally under 28 U.S.C. § 2254. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (“[W]e hold today that when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.”). And his request for damages is barred by *Heck v. Humphry*, which held that “in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” 512 U.S. 477, 486–87 (1994). It is clear from Plaintiff’s complaint that the state charges against him and upon which his custody rests have not been shown unlawful or invalid.

**IT IS THEREFORE ORDERED** that this action is **DISMISSED** without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).

**IT IS FURTHER ORDERED** that the Clerk of Court enter judgment accordingly.

**IT IS FURTHER ORDERED** that copies of this order be sent to the officer in charge of the agency where the inmate is confined and emailed to DLSFedOrdersEastCL@doj.state.wi.us.

A copy of this order shall be mailed to the Milwaukee County Sheriff and to Dennis Brand, 821 W. State Street, Room 224, Milwaukee, WI 53233.

**I FURTHER CERTIFY** that any appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) unless Plaintiff offers bonafide arguments supporting his appeal.

Dated at Green Bay, Wisconsin this 31st day of August, 2020.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge

This order and the judgment to follow are final. Plaintiff may appeal this court's decision to the Court of Appeals for the Seventh Circuit by filing in this court a notice of appeal within **30 days** of the entry of judgment. *See* Fed. R. App. P. 3, 4. This court may extend this deadline if a party timely requests an extension and shows good cause or excusable neglect for not being able to meet the 30-day deadline. *See* Fed. R. App. P. 4(a)(5)(A). If Plaintiff appeals, he will be liable for the \$505.00 appellate filing fee regardless of the appeal's outcome. If Plaintiff seeks leave to proceed *in forma pauperis* on appeal, he must file a motion for leave to proceed *in forma pauperis* with this court. *See* Fed. R. App. P. 24(a)(1). Plaintiff may be assessed another "strike" by the Court of Appeals if his appeal is found to be non-meritorious. *See* 28 U.S.C. § 1915(g). If Plaintiff accumulates three strikes, he will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serious physical injury. *Id.*

Under certain circumstances, a party may ask this court to alter or amend its judgment under Federal Rule of Civil Procedure 59(e) or ask for relief from judgment under Federal Rule of Civil Procedure 60(b). Any motion under Federal Rule of Civil Procedure 59(e) must be filed within **28 days** of the entry of judgment. Any motion under Federal Rule of Civil Procedure 60(b) must be filed within a reasonable time, generally no more than one year after the entry of judgment. The court cannot extend these deadlines. *See* Fed. R. Civ. P. 6(b)(2).

A party is expected to closely review all applicable rules and determine, what, if any, further action is appropriate in a case.